IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4126 OF 2006

Napu @ Mapanna Sharannappa Kerave ..Applicant

versus

The State of Maharashtra ..Respondent

Mr.B.J.Sarwade for applicant

Mr.S.S.Pednekar, APP for St ate

CORAM : S.C.DHARMADHIKARI,J.

DATE : 22ND NOVEMBER, 2006

P.C.:

1. Heard Shri Sarwade appearing for the applicant-original accused and Shri Pednekar for the State.

2. The applicant has been arrested in connection with C.R.No.311 of 2006 by MIDC Police Station, Andheri for the

offence punishable under Section 302 of IPC.

3. The applicant's request to enlarge him on bail upon investigations being complete and charge-sheet filed has been rejected by the learned Addl. Sessions Judge.

4. The learned Addl. Sessions Judge has observed that the incident took place on account of the right to reside and occupy in the room and the tenement which may become available under the SRA Scheme. Assigning this and other reasons viz. that the trial can be expedited, the application was rejected.

5. Mr. Sarwade has taken me through the statement of the mother of the deceased so also his wife and has contended that the family members have clearly stated that the deceased was an alcoholic. On the relevant date and even prior thereto the accused and the deceased had quarrelled. The mother has categorically stated in her statement to the police that she witnessed the incident. The deceased came back after consuming Toddy and fainted. Upon fainting and falling down his head hit a wooden box. She states that after fainting his head hit the wooden box. He fell down and became unconscious. That is also

the version of the neighbour Mrs. Neema Swami D'Silva and others. In such circumstances, prima facie, it is difficult to accept the prosecution case that the deceased was throttled. The learned APP invites my attention to the Post Mortem Report. The injury to the neck of the deceased is also explained by the learned counsel for the applicant by pointing out that prior to the incident there was a quarrel and the marks on the neck of the deceased were out come of the same. There are statements of persons who have witnessed the said incident as well.

6. The applicant and the deceased were the two sons. After the death of the deceased it is the applicant, who is the sole bread earner. The family of the deceased, who was an alcoholic has also to be supported. The mother is old. In such circumstances, and when stringent conditions are imposed the applicant's application can be granted. Hence, the following order :

O R D E R :

(i) The applicant is arrested in connection with C.R.No.311 of 2006 registered with MIDC

Police Station, Andheri shall be enlarged in the sum of Rs.10,000/= with one or two local sureties in the like amount.

(ii) The applicant shall report to MIDC Police Station, Andheri, Mumbai once in a week till the conclusion of the trial.

(iii) The applicant shall furnish his address to the Investigating Officer where he proposes to reside after bail and during pendency of the trial. The applicant shall not change his residence without prior permission of the Investigation Agency;

(iv) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence;

(v) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial

may be a ground for cancellation of bail;

(v) Any observation/s made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(ix) Application is disposed of in above terms.

7. Considering that the applicant is accused of an offence under Section 302 and the trial judge being of the opinion that the matter can be concluded expeditiously, the trial is expedited. The learned Judge to endeavour and dispose of the case as expeditiously as possible and in any event by 31st August, 2007.

(S.C.Dharmadhikari, J.)